

C18-19



Upper Boggy Creek Neighborhood Plan Contact Team

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Roscoe Overton, Secretary

22 May, 2012

Planning Commission

Re: Resolution of the Upper Boggy Creek Planning Team for the 4020 Airport Property; File Number: NPA-2011-0012.01; C14-2011-0085

To City of Austin Councilmember:

I am writing to inform you of the decision reached by the Upper Boggy Creek Neighborhood Plan Contact Team ("UBC") to recommend that the property referenced above be used as a green space, possibly as an extension of Patterson Park. We also recommend that the City of Austin pursue purchase of the property and consider adding the project to the current parks bond package.

I would be happy to discuss the matter with you further on behalf of UBC and I can answer any questions you may have.

Sincerely,

A handwritten signature of Christopher Swanson.

Christopher Swanson
Chair UBC

Station and Drive-in Services Accessory use." This rezoning has not occurred, and arguably as a result of the existing restrictions, the property has remained undeveloped.

While the UBC has been involved in the discussion of rezoning since its inception, the most recent efforts have occurred over the last 18 months or so, with numerous meetings devoted almost entirely to this subject. UBC typically defers to the wishes of the neighborhood in which the property is located, in this case Cherrywood/Schieffer, and we have been provided with updates on the status of the case from representatives of the neighborhood more or less continuously over the time period.

Several months ago, Betty Terrell, an owner of the subject property, began attending our monthly meetings. She and/or her representative Mr. Bennett attended every meeting UBC held on the subject and answered every question we posed. They also attended meetings conducted by Cherrywood Neighborhood Association, a "Task Force" assembled to attempt to find a compromise set of restrictions on the property, and the Public Meeting conducted by the City. Ms. Terrell has spoken passionately about her desire to sell the property and the difficulties posed by the existing restrictions. We complement Ms. Terrell for her willing engagement in a lengthy process that ultimately could not reach agreement on a new set of restrictions for the property.

Ultimately, at the May 16th General Meeting of the Cherrywood Neighborhood Association ("CNA"), CNA voted against adopting a proposal for modified restrictions based on the Task Force recommendations. No alternative motion was offered at that meeting. Thus, the Cherrywood Neighborhood does not have an official position beyond the opposition to the changes originally proposed by the applicant. Cherrywood has never voted directly on the UBC position taken herein.

II. VARIOUS PROPOSALS

Months of work from various groups on a complex topic cannot be easily summarized, but for those purposes I will refer to two alternative positions that have emerged from the process described above. First, there is the position of a group of neighbors lead by Brian Graham-Moore, which is reflected in the attached document labeled "Original Covenant for 4020 Airport Contrasted by Amended Changes of Adjacent Neighbors" with the column labeled "Amended Covenant Change" being the position espoused by this group. The other proposal is the one voted down at the General Meeting of CNA, which is based on the Task Force recommendations. A copy of that proposal is also attached for reference.

Both proposals reflect hours of work on the part of everyone involved however, neither garnered a clear majority of the neighborhood and, therefore, neither is recommended here. Ultimately, only the use of the property for green space was approved by a majority of UBC members.

III. CONCLUSION

After a lengthy, open process involving all parties, during which several alternative proposals were developed and supported by various groups, the only one which has been endorsed by a majority of members of UBC is the use of the property for green or park space and we would recommend that the city pursue purchase of the property at fair market value and consider adding the project to the current parks bond package. To be clear, as a group we do not endorse any changes to the present zoning or restrictive covenants burdening the property. This is consistent with the position of the immediately surrounding neighbors as well as CNA.

I would be happy to discuss the matter with you further on behalf of UBC and I can answer any questions you may have.

Sincerely,

A handwritten signature in black ink, appearing to read 'Chris', followed by a long horizontal flourish.

Christopher Swanson
Chair UBC

Original Covenant for 4020 Airport Contrasted by Amended Changes of Adjacent Neighbors

Original Covenant Description	Amended Covenant Change
Zoning Code of O-1 Office District	LO per City Council vote of 2010. Vertical Mixed Use (VMU) an option.
List of businesses not allowed	List of allowed business categories under LO, as amended.
6 foot privacy fence	At least 8 foot privacy masonry fence kept in good repair with vegetative buffer on all sides not less than 15 feet in width. Major native trees spaced no more than 30 feet apart.
Privacy description	No change. Privacy is very important. Subchapter E guidelines are satisfactory.
No 24 hour activity	Business hours to be 7 a.m. to 7 p.m.
Lighting restrictions	No change, Subchapter E guidelines are satisfactory
No portable structures	No change
No heavy equipment	No change
Improvements per Site Plan Ex. A	Delete old Ex. A. Owners to show site plan with setbacks clearly shown with no less than 30% adjacent homeowners approval
Style of roof	Delete
Two stories only	Change. Two are permitted if VMU, with <u>maximum</u> height of 32 feet. This includes roof line.
Gross building cannot exceed 40,000 sq ft	Gross building cannot exceed 45,000 sq ft, not including compatibility standards, drainage ways, flood plains, and water quality setbacks.
Trash restrictions	As required in Subchapter E
No signs	Painted only with or without soft lighting. No kinetic or moving signs.
Security patrols	24 hour video surveillance if commercial use
New codes/ordinances must be met	No change.
Covenant violation permits prosecution	Violations permit prosecution and penalties of not less than \$10,000 for each infraction.
Invalidation of any one part of the covenant by legal means does not invalidate remainder.	No change
City Council can modify, amend or terminate with a three quarter vote	Requires a super majority to modify, amend, or terminate this covenant.
	No Ingress or egress at Schieffer Avenue

May 20, 2012

	Amended Zoning Code
Type of Business	LO (Limited Office)
Administrative/business office	Permitted
Art Gallery	Permitted
Art Workshop	NP
Consumer Convenience Services	NP
Medical Offices (5K sq ft or less)	NP
Medical Offices (exceeding 5K sq ft)	NP
Professional Office	Permitted
Software Development	Permitted
Special Historic Use	Conditional
Community Garden	Permitted
Urban Farm	Permitted

Legend: NP = not permitted

4020 AIRPORT BOULEVARD

**Cherrywood Neighborhood Association (CNA) Steering Committee (SC)
recommended CNA Position**

CNA continues to oppose the applications as filed last year by the Owner, and after an intensive and lengthy process, we offer the following Recommendation concerning the FLUM, the Zoning and the proposed Restrictions:

FLUM CHANGE:

Change the Future Land Use Map (FLUM) designation from "Office" to "Neighborhood Mixed Use".

ZONING CHANGE

Change "LO-V-NP" to "LR-V-MU-NP" (or if some or all of the conditions are contained in a Conditional Overlay, "LR-V-MU-CO-NP").

CONDITIONS

Note that we understand that the following conditions may be codified through a Conditional Overlay (CO), a Public Restrictive Covenant, and/or a Private Restrictive Covenant. CNA recommends that COA Staff, Planning Commission and City Council utilize the most effective method to codify these Conditions.

Prohibited Uses (these are uses that are shown as allowed in LR base zoning, are proposed to be restricted; i.e. NOT ALLOWED on this site)

- Service Station
- Off-Site Accessory Parking
- Pet Services
- Financial Services
- Art Workshop
- Consumer Convenience Services
- Printing and Publishing
- Restaurant (Limited)

note the taskforce and Steering Committee intended to restrict the following uses, but that was no longer explicit when the document was rearranged.

- Restaurant General
- Medical Office (exceeding 5,000 sq. ft)
- General Retail Sales (general)

Provisions related to the "MU" suffix (these provisions are intended to encourage significant, but not exclusive, residential uses):

- The height of any building or buildings where residential is NOT included, or where residential use is less than 50% would be limited to 32 feet and a maximum of 2 stories.
- If residential uses ARE included, no one building, nor the entire development, may exceed 65% residential.

Other provisions:

- There shall be a masonry privacy wall along the west and south sides of the property, 8 feet high. The wall shall have vegetative buffer on all sides. Major native trees in the buffer are to be spaced no more than 30 feet apart.
- 24 Hour Security surveillance is required
- No compounding pharmacy shall be permitted.
- Any individual retail space shall have a maximum of 4,000 square feet
- No vehicular access to Schieffer
- Maximum gross building footprint area of 45,000 square feet
- All building windows facing adjacent private residential property shall be designed so that a person of average height (5'10"), sitting or standing in a normal posture, cannot see neighboring yards or windows of nearby homes. This shall be accomplished by the use of louvers, placement above normal eye level, or any other effective means. Any fixtures installed for this purpose shall be permanent and shall not be adjusted or removed by building tenants or owners.
- Business hours 7:00am-7:00pm
- Subchapter E lighting restrictions with the additional restriction that the source of light shall not be visible to adjacent property owners
- No portable structures
- No heavy equipment
- Site signage must follow the Scenic Roadway Sign ordinance
- Covenant violations permit prosecution and penalties of not less than \$10,000 for each infraction.
- Invalidation of any one part of the covenant by legal means does not invalidate the remainder.
- Requires a super majority of city council to modify, amend, or terminate the covenant.
- Walls, structures or screens which would obscure views to the areas between buildings and interior property lines from Airport Blvd or Schieffer Avenue are prohibited.

May 20, 2012

At the May 16th General Meeting of the Cherrywood Neighborhood Association (CNA), a motion to adopt the CNA Steering Committee's recommendation on the 4020 Airport property was voted down by a vote of 40 to 16. No alternative motion was offered at the meeting. Thus, the Cherrywood Neighborhood does not have a position beyond the opposition that was voiced for the flum and zoning changes requested by the applicant at the February 15 meeting of the CNA membership.

I am attaching both the recommendation of the steering committee and the position that has been distributed by Brian Graham-Moore who indicates that he speaks for a coalition of neighbors surrounding the property. The CNA attempted to find common ground on the issues related to the property and the Steering Committee recommendation you see here was based on a series of taskforce meetings, then also on a Land Use and Transportation meeting and then a Steering Committee meeting. All meetings were announced ahead of time and all of those who were interested were welcome to attend.

Despite the differences that can be found in the two positions, I would like to point out the effort that was put into crafting a set of additional restrictions in the Steering Committee recommendation on the percentage of the property that can be residential if an MU designation ends up being considered. Likewise, if the full height of the allowed building height is to be allowed, they must include a certain percentage of residential. Even if this property doesn't benefit from this work, it may prove to be useful to other neighborhoods who want to try and craft their zoning to encourage true mixed residential developments.

/Aaron Choate

Chair of the Cherrywood Neighborhood Association Steering Committee